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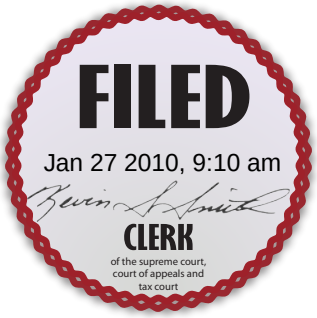

ATTORNEY FOR APPELLANT:

KEVIN WILD
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JASON ROSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0906-CR-591
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0807-FC-167633

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jason Ross appeals the trial court's order revoking his probation and directing him to serve the entirety of his previously-suspended 613-day sentence. We affirm.

Issue

The sole restated issue is whether the trial court abused its discretion in requiring Ross to serve the entirety of his previously-suspended sentence after it found he had violated his probation.

Facts

In late June and early July 2008, Ross repeatedly made harassing phone calls to his wife, Rhonda, and harassed her in person as well. Ross evidently was (and is) estranged from Rhonda. On July 18, 2008, the State charged Ross with three counts of Class C felony stalking, one count of Class D felony domestic battery, one count of Class D felony battery, one count of Class D felony confinement, one count of Class D felony intimidation, and one count of Class A misdemeanor confinement. On March 13, 2009, Ross pled guilty to Class D felony intimidation and a new count of Class A misdemeanor invasion of privacy, based on Ross's violation of a protective order for Rhonda. The trial court sentenced Ross to a term of 1095 days for the Class D felony and 180 days for the Class A misdemeanor, to run concurrently, with 241 days of credit for time served. The trial court suspended 613 days of the sentence for the Class D felony, to be served on

probation, and entered a no contact order for Rhonda's protection. The no contact order specified that Ross's contact with his children was to be facilitated through his mother.

Shortly after Ross was sentenced and was released from incarceration because of credit time, he began frequently contacting Rhonda through text messages, phone calls, and voice mail messages. Some of the messages and calls related to the couple's children, because Rhonda was unwilling to facilitate contact with the children through Ross's mother. Most of the texts and calls, however, related to Ross wanting to reconcile with Rhonda. Although Rhonda did initiate some of the contact with Ross, and apparently had consensual sex with him on at least one occasion, she also told Ross to "leave her alone" and changed her phone number to try to avoid him contacting her. Tr. p. 23. After she changed her number, Ross was observed on several occasions outside Rhonda's apartment.

On May 26, 2009, the State filed a notice of probation violation, alleging Ross had violated probation by violating the no contact order. The trial court conducted a hearing on June 4, 2009, and found that Ross had violated probation. It ordered him to serve the full 613 days of his suspended sentence. Ross now appeals.

Analysis

On appeal, Ross does not deny that he violated his probation by violating the no contact order. He contends, however, that there are mitigating circumstances in this case that should have led the trial court to impose a penalty less severe than requiring him to serve the full amount of his suspended sentence. Upon a finding that a defendant has

violated probation, a trial court may continue the defendant on probation, with or without modifying or enlarging the conditions of probation; extend the defendant's probationary period for not more than one year beyond the original probationary period; or order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g).

Although Ross mentions Indiana Appellate Rule 7(B) and its "inappropriate" standard of review for sentences, that is not the correct standard to apply when reviewing sanctions imposed in a probation revocation proceeding. Jones v. State, 885 N.E.2d 1286, 1289 (Ind. 2008). Rather, probation violation sanctions are reviewed only for an abuse of discretion. Id. "An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court." Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). We cannot review the propriety of the original sentence when reviewing a trial court's decision to order a defendant's previously suspended sentence to be executed after revoking probation. Id.

Ross directs us to Rhonda's testimony that she initiated some contact with him soon after he began probation and failed to facilitate Ross's interaction with their children through Ross's mother, as the no contact order required. There is ample evidence, however, that Ross initiated the bulk of the contact with Rhonda, that the majority of that contact dealt not with their children, but his desire to reconcile with Rhonda, and that Rhonda repeatedly made it clear that she wanted no more contact with Ross, even going so far as to change her phone number. Moreover, this is precisely the type of conduct

that led to Ross's convictions and the no contact order in the first place. Ross also admitted that he knew there were legal avenues he could have pursued to force Rhonda to facilitate contact with his children, but he chose not to pursue them. Even if Rhonda initiated some of the contact with Ross, the onus was upon Ross to avoid contact with Rhonda, not vice versa. We cannot say the trial court abused its discretion in requiring Ross to serve the full amount of his previously-suspended sentence.

Conclusion

We affirm the trial court's decision to require Ross to serve the full 613 days of his previously-suspended sentence.

Affirmed.

MATHIAS, J., and BROWN, J., concur.